



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2015-0123; FRL-9924-54-Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri, Construction Permits Required

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for the State of Missouri submitted on October 2, 2013. This proposed rulemaking will amend the SIP to update the construction permits rule to incorporate by reference recent EPA actions related to plantwide applicability limitations (PALs) for greenhouse gases (GHGs) and to correct the definition of "regulated NSR pollutant." Other revisions include modifying the notification period for initial equipment start-up and clarifying de minimis permit air quality analysis requirements.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2015-0123, by one of the following methods:

1. www.regulations.gov. Follow the on-line instructions for submitting comments.
2. Email: Higbee.paula@epa.gov
3. Mail or Hand Delivery: Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2015-0123. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or email information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that

is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913-551-7028 or by email at Higbee.paula@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Background
- III. Have the Requirements for Approval of a SIP Revision Been Met?
- IV. What Action is EPA taking?

I. What is Being Addressed in this Document?

EPA is proposing to approve the SIP revision submitted by the state of Missouri for 10 CSR 10-6.060, “Construction Permits Required”. On October 3, 2013, EPA received a request to amend the SIP to incorporate by reference all sections of title 40 part 52.21 of the Code of Federal Regulations (CFR) except for subsections (a), (q) and (s) through July 1, 2012. Missouri is also requesting to amend the SIP to incorporate by reference EPA’s July 12, 2012, final rule finalizing PALs for GHGs (77 FR 41051) and EPA’s October 25, 2012, final rule amending the definition of “Regulated NSR Pollutant” concerning condensable particulate matter (77 FR 65107). In Missouri’s letter to EPA,

Missouri also requested to amend the SIP to incorporate EPA's May 18, 2011, rule repealing the grandfathering provisions for particulate matter less than 2.5 micrometers (PM_{2.5}) under the PSD program, but because the state has an already approved PSD program which incorporates by reference the provisions of 40 CFR 52.21 through July 1, 2011, Missouri's Federally approved program already incorporates this action. Other revisions to Missouri's rule which we are proposing to take action on include clarifying the requirements for conducting an air quality analysis in section 5, De Minimis Permits and making minor administrative clarifications as well as revising the notification period for initial start-up in section 6, General Permits.

II. Background

Missouri implements its PSD program by incorporating by reference section 52.21 of the CFR in its rule 10 CSR 10-6.060, "Construction Permits Required". In a previous action on June 21, 2013, EPA approved the most recent amendment to Missouri's PSD program (78 FR 37457). Missouri's currently approved PSD program incorporates by reference (IBR) the Federal regulations as promulgated July 1, 2011, in the CFR, and incorporates the July 20, 2011, rule "Deferral for CO₂ Emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant

Deterioration and Title V Programs" ("Biomass Deferral" 76 FR 43490). Missouri's currently approved PSD program contains a number of important required elements, including those related to the 2008 "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})" (2008 NSR PM_{2.5} Rule; 73 FR 28321). For PSD sources in Missouri, PSD permits must address direct PM_{2.5} emissions as well as precursor emissions (including sulfur dioxide (SO₂) and oxides of nitrogen (NO_x)), establish significant emission rates for PM_{2.5} and precursor emissions, and establish the requirement to account for condensable particulate matter. On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), in *Natural Resources Defense Council v. EPA*, issued a decision that remanded the EPA's rules implementing the 1997 PM_{2.5} NAAQS.¹ The court's remand of the 2008 NSR PM_{2.5} Rule is relevant to this final rulemaking. This rule promulgated NSR requirements for implementation of PM_{2.5} in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). The D.C. Circuit found that EPA erred in implementing the PM_{2.5} NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title 1 of the CAA, rather than pursuant to the additional implementation provisions specific to

¹ See 706 F.3d 428 (D.C. Cir. 2013).

particulate matter nonattainment areas in subpart 4. The Court ordered EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." (*Id.* at 437). However, as the requirements of subpart 4 only pertain to nonattainment areas, it is EPA's position that the portions of the 2008 NSR PM_{2.5} Rule that address requirements for PM_{2.5} in attainment and unclassifiable areas are not affected by the D.C. Circuit's opinion in *NRDC v. EPA*. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 NSR PM_{2.5} Rule in order to comply with the court's decision. Accordingly, EPA's approval of Missouri's SIP as to the PSD requirements promulgated by the 2008 NSR PM_{2.5} Rule does not conflict with the D.C. Circuit's opinion.

On October 20, 2010, EPA promulgated additional PSD regulations relating to PM_{2.5}: "Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}) - Increments, Significant Impact Levels (SILs), and Significant Monitoring Concentrations (SMC)" (2010 PSD PM_{2.5} Rule, 73 FR 64864). On January 22, 2013, the D.C. Circuit, in *Sierra Club v. EPA*, issued a judgment that, *inter alia*, vacated and remanded the SIL provisions at section 52.21(k)(2). Additionally, the D.C. Circuit vacated the SMC

provisions at section 52.21(i)(5)(i)(c).² In response to the D.C. Circuit's decision, EPA took final action on December 9, 2013, to remove the SIL provisions from the Federal PSD regulations, and to revise the SMC for PM_{2.5} to zero (78 FR 73698). On March 19, 2013, and October 21, 2013, Missouri submitted additional information to amend their September 5, 2012, SIP submission to clarify that they no longer intended to include the PM_{2.5} SILs and SMC provisions (see 78 FR 37457, June 21, 2013, for more information). Specifically, Missouri Department of Natural Resources (MDNR) will not apply either the PM_{2.5} SILs provisions at 40 CFR 51.166(k)(2) and 52.21(k)(2), or the PM_{2.5} SMC provisions at 40 CFR 51.166(i)(5)(i)(c) to pending or future PSD permit actions. It is the state's intent that PM_{2.5} will remain on the list of pollutants but that the associated concentration level would be blank or zero. In other words, pre-construction monitoring will continue to apply but without de minimis thresholds. Therefore, the provisions with which the court took issue are not in effect in Missouri.

² See 705 F.3d 458, 469

On June 23, 2014, the United States Supreme Court, in *Utility Air Regulatory Group v. Environmental Protection Agency*, issued a decision addressing the application of PSD permitting requirements to greenhouse gas (GHG) emissions.³ The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or modification thereof) required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action before the D.C. Circuit to effectuate the decision, the EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant, (i) that the source emits or has the potential to emit above the major source thresholds, or (ii)

³ 134 S.Ct. 2427

for which there is a significant emissions increase and a significant net emissions increase from a modification (e.g. 40 CFR 51.166(b)(48)(v)).

EPA anticipates a need to revise Federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. This can be accomplished as soon as EPA revises the Federal PSD rules in states that allow future revisions to the Federal PSD program to be automatically incorporated into the SIP. The timing and content of subsequent EPA actions with respect to the EPA regulations is expected to be informed by additional legal processes before the D.C. Circuit. EPA is not expecting states to have revised their existing PSD program regulations at this juncture, before the D.C. Circuit has addressed these issues and before EPA has revised its regulations at 40 CFR 51.166. However, EPA is evaluating PSD program submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

Missouri's existing approved SIP contains the GHG permitting requirements reflected in 40 CFR 52.21 after EPA issued the Tailoring Rule. As a result, the PSD permitting program in Missouri previously approved by EPA into the SIP

continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT when sources emit or increase greenhouse gases in the amount of 75,000 tons per year (measured as carbon dioxide equivalent). Although the approved Missouri PSD permitting program may also currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not prevent EPA from approving the submission addressed in this rule. Missouri's 2013 SIP submission does not add any GHG permitting requirements that are inconsistent with the Supreme Court decision. While this submission incorporates all of section 52.21 for completeness, except for subsections (a), (q) and (s), the submission mostly reincorporates PSD permitting requirements for GHG's that are already in the Missouri SIP.

This proposed revision does add to the Missouri SIP the elements of EPA's July 12, 2012, rulemaking, Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits, "Step 3 Tailoring Rule" (77 FR 41051), which implements Step 3 of the phase in of PSD permitting requirements for GHGs. This rule became effective on August 13, 2012. Specifically, the

incorporation of the Step 3 rule provisions will allow GHG-emitting sources to obtain plantwide applicability limits (PALs) for their GHG-emitting sources on a carbon dioxide equivalent (CO₂e) basis. The GHG PAL provisions, as currently written, include some provisions that may no longer be appropriate in light of the Supreme Court decision. Since the Supreme Court has determined that sources and modifications may not be defined as "major" solely on the basis of the level of GHGs emitted or increased, PALs for GHGs may no longer have value in some situations where a source might have triggered PSD based on GHG emissions alone. However, PALs for GHGs may still have a role to play in determining whether a modification that triggers PSD for a pollutant other than GHGs should also be subject to BACT for GHGs. These provisions, like the other GHG provisions discussed previously, will likely be revised pending further legal action. However, these provisions do not add new requirements for sources or modifications that only emit or increase GHGs above the major source threshold or the 75,000 tpy GHG level in section 52.21(b)(49)(iv). Rather, the PALs provisions provide increased flexibility to sources that wish to address their GHG emissions in a PAL. Since this flexibility may still be valuable to sources in at least one context described above, we believe that it is appropriate to approve these provisions into the

Missouri SIP at this juncture.

EPA is proposing to revise Missouri's SIP to incorporate by reference EPA's October 25, 2012 rule, "Implementation of the New Source Review Program for Condensable Particulate Matter". This revision is appropriate and necessary to ensure that the inadvertent error which was contained in EPA's 2008 rule, which was previously SIP approved in the Missouri rule (78 FR 37457) is corrected. EPA's 2008 rule, "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}).\" See 73 FR 28321 (May 16, 2008), inadvertently included a requirement to consider condensable PM when measuring one of the emissions-related indicators for PM known as "particulate matter emissions" in the context of the PSD and NSR regulations. EPA's 2012 rule corrects the error in the 2008 rule and therefore it is appropriate and necessary to incorporate by reference the 2012 rule and related corrections to the definition of "particulate matter emissions."

III. Have the Requirements for Approval of a SIP Revision Been Met?

As stated above, Missouri's incorporation by reference of all sections of title 40 section 52.21 of the CFR except for subsections (a), (q) and (s) and EPA's July 12, 2012, final rule on PALs for GHGs(77 FR 41051) and EPA's October 25, 2012, final

rule amending the definition of "Regulated NSR Pollutant" concerning condensable particulate matter (77 FR 65107) are appropriate even in light of recent court actions and ensure that the state PSD program is in agreement with Federal requirements. Missouri also requested to amend the SIP to incorporate EPA's May 18, 2011, rule repealing the grandfathering provisions for PM_{2.5} under the PSD program, but because the state has an already approved PSD program which incorporates by reference the provisions of 40 CFR 52.21 through July 1, 2011, Missouri's Federally approved program already incorporates this action.

Additional revisions include, in paragraph (5)(D)(1) of the rule, Missouri is adding subparagraphs A. and B. which provide clear and specific requirements for when an air quality analysis is required for De Minimis permits. In (5)(D)(2) of the rule, Missouri is adding subparagraphs A., B., and C. which provide clear and specific requirements for when the director may require an air quality analysis. These revisions strengthen Missouri's PSD program.

MDNR is making minor administrative edits to subsections (6)(A) and (6)(A)(2). In (6)(E)(1)(A) Missouri is modifying the notification period for initial equipment start-up. This

revision shortens the timeframe for which notification is provided to the state prior to initial start-up.

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfies the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. MDNR received five (5) comments from one source: the U.S. Environmental Protection Agency. Missouri responded to each of the comments and made revisions to the rule as appropriate. Overall, these actions strengthen the Missouri SIP, by ensuring the state PSD program incorporates recent Federal PSD updates. These revisions do not negatively impact air quality, nor relax the SIP.

IV. What Action is EPA Taking?

EPA is proposing to approve the revisions to the SIP. These revisions update the construction permits rule to incorporate by reference recent EPA actions related to PALs for GHGs, and amend the definition of "Regulated NSR Pollutant." Other revisions include modifying the notification period for initial equipment start-up and clarifying de minimis permit air quality analysis requirements.

We are processing this rule as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

Statutory and Executive Order Reviews

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Missouri 10 CSR 10-6.060 "Construction Permits Required" described in the proposed amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required

information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Filing a petition for reconsideration by the Administrator of this proposed rule does not affect the finality of this rulemaking for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such future rule or action. This proposed action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 9, 2015.

Mark Hague,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

Subpart AA - Missouri

2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10-6.060 to read as follows:

§52.1320 Identification of Plan.

* * * * *

(c) * * *

EPA-Approved Missouri Regulations

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6–Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri				
10 CSR 10-6.060	Construction Permits Required	10/30/13	[Insert Federal Register date of publication date] and [Insert Federal Register citation]	Provisions of the 2010 PM _{2.5} PSD–Increments, SILs and SMCs rule (75 FR 64865, October 20, 2010) relating to SILs and SMCs that were affected by the January 22, 2013 U.S. Court of Appeals decision are not SIP approved. Provisions of the 2002 NSR reform rule relating to the Clean Unit Exemption and Pollution Control Projects are not SIP approved. In addition, we have not approve Missouri’s rule incorporating

				<p>EPA's 2007 revision for the definition of "chemical processing plants" (the "Ethanol Rule," 72 FR 24060 (May 1, 2007)).</p> <p>Although exemptions previously listed in 10 CSR 10-6.060 have been transferred to 10 CSR 10-6.061, the Federally-approved SIP continues to include the following exemption, "Livestock and livestock handling systems from which the only potential contaminant is odorous gas."</p> <p>Section 9, pertaining to hazardous air pollutants, is not SIP approved.</p>
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[FR Doc. 2015-06153 Filed: 3/17/2015 08:45 am; Publication Date: 3/18/2015]